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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

██████████
██████████
██████████

DECISION

KIN/166810

PRELIMINARY RECITALS

Pursuant to a petition filed June 18, 2015, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Kinship-DCF in regard to Kinship Care, a hearing was held on August 11, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied the petitioner's application kinship payments for children placed in her pursuant to a Child in Need of Protection and Services (CHIPS) order under Wis. Stat. § 48.13 because the placement was not in the children's best interest.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Laura Goba, Kinship Care Worker
Bureau of Milwaukee Child Welfare
1555 Rivercenter Drive
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Milwaukee County.
2. An initial assessment worker placed two children, ██████ and ██████, in the petitioner's home after removing the children from a parent's home due to safety concerns.

3. A Circuit Court judge entered a CHIPS order under Wis. Stat. § 48.13. That order placed the children in the petitioner's home.
4. On June 10, 2015 the agency sent the petitioner a notice of non-approval of kinship care payment stating that "we have reviewed your application for benefits under the Kinship Care program for the following children: [REDACTED] and [REDACTED]. Your payment cannot be approved because the living arrangements are not in the best interest of the child due to: DCF 58.10(2)(a)."
5. On July 15, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
6. Prior to the fair hearing, the children's placement on the CHIPS order was changed. The children are no longer placed in the petitioner's home.

DISCUSSION

The Kinship Care benefit is a public assistance payment of \$220 per month per child paid to a qualified relative who bears no legal responsibility to support the child. In Wisconsin, this benefit replaces the former Non-Legally Responsible Relative (NLR) Aid to Families with Dependent Children (AFDC) payment (see, Wis. Stat. § 49.19). To be eligible for the payments thereunder, the relative must meet all of the conditions set forth in Wis. Stat. §§ 48.57(3m)(am)(1-5) or 48.57(3n)(am)(1-6). See also, Wis. Admin. Code ch. DCF 58.

Kinship Care payments are made to support a "child" where the following conditions are met:

1. The kinship care relative applies to the county department or department for payments under this subsection and the county department or department determines that *there is a need for the child to be placed with the kinship care relative* and that the placement with the kinship care relative is in the best interest of the child.
2. The county department or *department determines that the child meets one or more of the criteria specified in s.48.13 or 938.13* or that the child would be at risk of meeting one or more of those criteria if the child were to remain in his or her home. *(emphasis added)*

Id., (3m)(am)1,2.

In order to be eligible for kinship care payments, the placement must be in the child's best interest. Wis. Admin. Code § 58.10(2)(a) states that the agency shall determine that the kinship living arrangement is in the best interests of the child by proceeding as follows:

1. If the child is placed with the relative by the order of a court pursuant to jurisdiction under s. 48.13 or 938.13, Stats., by a tribal court in a matter related to a child in need of protection or services, by the action of the child welfare agency pursuant to a court order or by a child welfare agency which is the guardian of the child, the agency shall assume that the living arrangement is in the best interests of the child and shall maintain a copy of the court order or other documentation in the kinship care relative's case record.

2. If the child is not placed by order of a court, the agency shall determine if the kinship living arrangement is in the best interests of the child [].

Wis. Admin. Code § 58.10(2)(a)(1-2).

The issue in this case is whether placement in the petitioner's home was in the best interest of the children. Prior to the hearing on this case, the agency removed these two children from the petitioner's home. The issue is kinship payment for the time in which the children were placed in the petitioner's home.

The agency denied kinship payment because "the proposed kinship living arrangement [was] not in the best interests of the children." The children were placed in the petitioner's pursuant to a CHIPS order under Wis. Stat. § 48.13. Although the specific CHIPS order was not presented, both the agency representative and the petitioner agreed that an initial assessment worker placed these children with the petitioner. A Circuit Court Judge continued that placement on a CHIPS order under Wis. Stat. §48.13.

The only issue in this case is whether the petitioner is eligible for kinship payment for the time in which these two children were in her care. An initial assessment worker placed these children in the petitioner's home. In addition, a CHIPS order continued that placement. Pursuant to Wis. Admin. Code § 58.10(2)(a)(1) the agency shall assume that such a living arrangement is in the best interests of the child. Thus, the petitioner is eligible for kinship payment for the time in which these children were in her care.

It should be noted that these children were subsequently removed from the petitioner's home. The petitioner disagrees with the removal. The removal is not at issue in this appeal. Placement of the children is managed through the CHIPS case at the Circuit Court level by a Circuit Court Judge.

CONCLUSIONS OF LAW

The agency incorrectly denied the petitioner's application for kinship payments.

THEREFORE, it is

ORDERED

That this case is remanded to the agency with instructions that the agency to approve the petitioner's application for kinship payment for the time in which these children were in her care. The agency shall comply with this order within 10 days of the date of decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

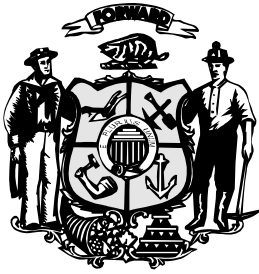
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 25th day of August, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 25, 2015.

Kinship-DCF

DCF - Kinship Care